

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0187
USE TAX
For The Tax Periods: 1993, 1994, 1995, 1996**

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ISSUE

I. Use Tax – Purchases

Authority: IC 6-2.5-3-2, IC 6-2.5-5-13, IC 6-8.1-5-1.

The Taxpayer protests the Department's assessment of use tax on parts and equipment associated with its communications tower.

STATEMENT OF FACTS

Taxpayer owns large transmission towers in Indiana and leases space on them to communication providers. More facts supplied as necessary.

I. Use Tax: Purchases

DISCUSSION

Audit assessed use tax on parts and equipment purchased and then used by Taxpayer to construct, improve, and maintain a radio communications tower. Pursuant to IC 6-2.5-3-2(a), “[a]n excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.”

Taxpayer contends that its tower and component parts are not subject to tax because the tower is a fixture. The Department agreed that the tower represents a fixture, however, such characterization alone does not warrant exempt treatment. Pursuant to IC 6-2.5-3-2(c):

The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on

which the structure is located. However, the use tax does not apply to additions of tangible personal property described in this subsection, if;

- (1) the state gross retail or use tax has been previously imposed on the sale or use of that property; or
- (2) the ultimate purchaser or recipient of that property would have been exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

Taxpayer contends the tower qualifies for the sales/use exemption of IC 6-2.5-3-2(c)(2). Taxpayer, however, qualifies for no exemption. Specifically, IC 6-2.5-5-13 states that transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property furnishes or sells intrastate telecommunication service in a retail transaction. However, Taxpayer is not a telecommunications provider. Taxpayer merely leases space on his tower to the communications companies. Consequently, as no exemption applies, Taxpayer should have paid sales tax, or self-assessed use tax, on its purchase of parts and equipment intended for its communications tower. Insufficient documentation was submitted by Taxpayer to show the use tax was in fact paid.

FINDING

The Taxpayer's protest is respectfully denied.